

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22851
Docket Number CL-22698

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8637)
that:

1. Carrier violated the Agreement between the parties when on June 6, 7, 8, 9 and 10, 1977, it used a junior employe instead of Clerk J. R. Tyree to fill the vacancy of Timekeeper in the East Yard, Bluefield, West Virginia on a hold down position.

2. Carrier shall now be required to compensate Extra Clerk J. R. Tyree for eight (8) hours at the time and one-half rate of pay for June 6, 7, 8, 9 and 10, 1977.

OPINION OF BOARD: Claimant, who is regularly assigned to the Extra Board at Bluefield, West Virginia contends that Carrier violated the Agreement when it assigned a junior employe to fill the Timekeeper's position in the East Yard.

Carrier, contrawise, denies this contention and asserts that he was unqualified to fill the position within the definitional requirements of Agreement Rule 13(d).

The section of this provision which is germane to this dispute provides that: "Extra employes will be called for work on a first-in first-out basis, if qualified, except that they may be assigned to 'hold downs' and may be required to remain thereon until released by Carrier." The following section referring to two or more Extra Board employes is moot, since this is not the fact situation herein.

In our review of this case, we find that Rule 13(d) (Supra) postulates a clear qualification judgment that vests exclusively with Carrier, subject of course, to Agreement limitations. Since there are no explicit restrictions on this decision, except the employer's understood obligation to demonstrate that the qualification test was reasonably met, the burden of proof falls upon the challenging party to show that it was an improper selection.

In this case, the only supportive evidence adduced on Claimant's behalf were the two statements submitted by fellow employees attesting to his qualifications to hold down the Timekeeper's position and the Claimant's averment that he worked this position before.

Carrier does not contest that he previously filled the position, but emphatically notes that he needed the assistance of others to fulfill adequately its responsibilities. This responsive assertion was undisputed.

When the overall record is carefully assessed, we do not find that Claimant persuasively demonstrated that he was qualified to fill this position or that he was improperly denied it by virtue of an unqualified seniority claim.

The relevant section of Rule 13(d) which applies here is an unambiguous provision and its qualification clause is explicit. We will deny the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1980.